IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 772 OF 1989

1. Anil Tukaram Gaikwad age 20 years
2. Dinkar Ramchandra Gaikwad age 35 years
3. Dilip Tukaram Gaikwad age 22 years
4. Tukaram Ramchandra Gaikwad
All residents of Vathar Kiroli, Taluka Koregaon District Satara ..Appellants (Ori. Accused Nos. 2 to 5)

versus

The State of Maharashtra ..Respondents

WITH

CRIMINAL APPEAL NO. 110 OF 1990

The State of Maharashtra ..Appellant
versus

1. Anil Tukaram Gaikwad
2. Dinkar Ramchandra Gaikwad
3. Dilip Tukaram Gaikwad
4. Tukaram Ramchandra Gaikwad ..Respondents (Ori. Accused Nos. 2 to 5)

Mr. A. P. Mundargi for the Original Accused Nos. 2 to 5.

Mr. D. R. More, APP for the State.

CORAM : D. G. DESHPANDE, &
S. R. SATHE, JJ.

DATE : 9TH JANUARY, 2007.

ORAL JUDGMENT : (Per : D. G. DESHPANDE, J.)

1. Heard learned counsel for the Appellants - Original Accused Nos. 2 to 5 and learned APP for the State.

2. Criminal Appeal No. 772 of 1989 is filed by the Appellants - Original Accused Nos. 2 to 5 challenging their conviction under Sections 147, 148, 307 r/w. 149, 325 r/w. 149, 326 r/w. 149 and also under Section 506 r/w. 149 of I.P.C. They were sentenced for one year under section 147, one year under Section 148, five years with fine under section 307 r/w. 149, under section 325 r/w. sec. 149 no separate sentences are imposed, one year under section 506 r/w. 149. All the substantive sentences to run concurrently. Criminal Appeal No. 110 of 1990 is filed by the State for enhancement of the sentence. There were in all five accused. But the accused No.1 is absconding.

3. All the accused are related. They were residing in on house but were separate in mess and residence. Absconding Accused No. 1 and original

accused Nos. 3 and 5 are the real brothers. Original Accused Nos. 2 and 4 are the sons of original accused No. 5.

4. FIR in this case is lodged by Kisan (P.W. 7) It is at Exhibit 46. The case given in the FIR is that there was a quarrel between son of Mahadeo Anna Mane, Rajendra and son of Dinkar Rama Gaikwad in front of Gymnasium in the morning at 8.30. That quarrel was pacified by Mahadeo Anna Mane and when Mahadeo Anna Mane was taking his son to his house, absconding accused Mansing Ramchandra Gaikwad appeared and abused Mahadeo Anna Mane by saying "I will finish you". He then brought Sattur from his shop. He was accompanied by all these accused. Then Anil Tukaram Gaikwad and Dilip Gaikwad caught hold of Mahadeo Mane and Mansing Ramchandra Gaikwad assaulted Mahadeo Mane with Sattur on head and on his left hand, and therefore this complaint. Charges against the accused were of unlawful assembly under Sections 147, 148, 325 r/w. 149, 326 r/w. 149, 306 r/w. 149, 504 r/w. 143 of IPC. Therefore, there are two victims of the assault by absconding accused Mansing because undisputedly it was Mansing who used Sattur and inflicted blow on

Mahadeo and on his son.

5. In this background, the contention of the counsel for the Appellants - Accused that if admittedly the serious blows were inflicted by absconding accused Mansing and others did not share the common intention of Mansing and their acts were not so serious as to incur conviction under Section 307 and other Sections of I.P.C., other accused were entitled for acquittal or in any case they were entitled for lesser sentence.

6. In view of these submissions, it will be necessary to see what is the ocular version of the incident given by Mahadeo and another victim Rajendra.

7. Prosecution examined Mahadeo Anna Mane at P.W. 5. He has stated amongst other things that his brother Tukaram was given in adoption. There was a marriage of the daughter of Tukaram on 21.5.1986. When the incident took place his son Rajendra had gone to the house of Tukaram for pouring the water. He left the house at about 7 a.m. After some time Rajendra came back and

informed that there was a quarrel between him and son of accused Dinkar. Thereupon Mahadeo and Rajendra went to the shop of the absconding accused Mansing. Mahadeo requested Mansing not to interfere in the quarrel of the boys. But absconding accused Mansing threatened that he would kill them and also he assaulted Rajendra. In the meanwhile Mahadeo's sister Sonubai came there, she intervened and tried to pacify on the ground that there was a marriage at Tukaram's House and therefore they should not quarrel.

8. Thereafter Mahadeo has stated that he and his son Rajendra went near Talim. At that time she saw accused Anil approaching them followed by accused Dilip. Accused Tukaram also came there with stick and they were followed by absconding accused Mansing and accused Dinkar. Then according to this witness accused Anil embraced him and accused Dinkar held both his hands and accused Tukaram gave blow of stick on his back and thereafter absconding accused Mansing who had come there with Sattur started inflicting blows of Sattur on his person. Then blows were given on head, neck, left hand and thigh. He was profusely bleeding because of these injuries.

He managed to release his hand from the hand of accused Anil but absconding accused Mansing gave blow of Sattur on his left hand and severed it completely.

9. Mahadeo has further stated that his son Rajendra was there witnessing the incident. He was shouting and crying but when he approached towards him, Mansing gave a blow of Sattur on his right wrist and by that blow right palm of Rajendra fell down on the ground. Then her sister Sonubai came there so also complainant Kisan and all the accused ran towards their house.

10. The evidence of Mahadeo is corroborated by the evidence of Rajendra P.W. 6 and Sonubai P.W. 8. It is also supported by medical evidence, panchnama and other circumstances.

11. As per the medical evidence, Mahadeo suffered following series injuries:

> **1. Left forearm totally cut near across at the level of 10 cms. above left wrist. Both bones of left forearm cut. Lower portion of left forearm having by skin flap.**

2. Incised wound as frontal region of head .6 cms x 2 cms. Bone deep, oval direction autopostiv.

3. Incised wound on oxipital region of head direction, traverse oval shaped, dimensions 12 cms. x 3 cms. Bone deep.

4. Incised wound on left temporal region direction anterior posterior, oval shaped dimensions 3 cms. x 1 cm. bone deep.

5. Incised wound on left sterrnomastoid muscle on left side of neck. Direction vertical dimension 4 cms. x 1/2 cms. muscle deep.

6. Incised wound over left clavicle medial end dimensions 2 cms. x 1/2 cms.

7. Incised wound over spine of left scapula on back, direction transverse, 6 cms. x 1 cm. muscle deep oval shapped wound.

8. Incised wound on right forearm 8 cms. x 2 cms. muscles deep transverse.

Doctor opined that these injuries can be caused by sharp cutting instrument. Similarly, Rajendra sustained total imputation through wrist.

12. Since two victims of the assault were alive to testify before the court and since their testimony was fully corroborated by the other

evidence, the trial court was justified in convicting the accused.

13. The learned APP contended that the sentence awarded by the trial court i.e. maximum sentence of five years is inadequate looking to the imputation of hands of Mahadeo and Rajendra and therefore the sentence should be enhanced.

14. Mr. Mundargi Counsel for the accused contended that all these grievous injuries were caused by absconding accused Mansing, it cannot be said that all the accused had intention to attempt to commit murder of Mahadeo or of Rajendra and individual acts attributed to them and as stated by witness Mahadeo, are not serious enough for the enhancement, and, therefore, the appeal of the State was required to be dismissed.

15. We have given our anxious consideration to the submissions made by both the sides. This is a case where neither the sentence given to the accused on any count is required to be reduced nor it is required to be enhanced. Since the fatal blows were given by absconding accused Mansing alone, the other

accused were rightly convicted for different offences and sentence is also proportionate to their crime. Mr. Mundargi counsel for the accused informed us that later on absconding accused Mansing was arrested and he was also convicted apart from his further conviction for murder in other case. That apart, looking to the role played by these accused and the fact that Mahadeo had a quarrel with absconding accused Mansing, it cannot be said that all the accused shared common intention of causing death or attempted to cause death of Mahadeo or Rajendra. Their sentences are proper. Not a case for enhancement nor a case for reduction of sentence. The trial court has rightly awarded the sentence.

16. In the result, both the appeals are dismissed. Bail Bonds of the accused stands cancelled. Accused to surrender before the trial court within four weeks from today. If they fail to surrender, the trial court to take appropriate action against them under Criminal Procedure Code and sent them to jail for undergoing sentence imposed by the trial court.

(D.G. DESHPANDE, J.)

(S. R. SATHE, J.)